

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. Z-578-28-2683-D4  
Issued to: Ernest R. Johnson

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2082

Ernest R. Johnson

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 2 June 1976, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS PRESIDENT MCKINLEY under authority of the document above captioned, on or about 23 December 1975, Appellant without provocation committed wrongful assault and battery with his fists upon the vessel's Boatswain.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and one specification.

The Investigating Officer introduced in evidence five exhibits and the testimony of three witnesses.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and one specification had been proved. He then served a written order on Appellant revoking all documents issued to Appellant.

The entire decision and order was served on 2 June 1976. Appeal was timely filed on 21 June 1976.

FINDINGS OF FACT

On 23 December 1975, Appellant was serving as an able seaman on board the United States SS PRESIDENT MCKINLEY and acting under authority of his document while the ship was in the port of Yokohama, Japan. At about 2130 hours on this date the vessel's Boatswain was engaged in preparing the vessel for departure. The Boatswain ordered an able seaman to call the deck crew, which included Appellant, so that the gangway safety net could be taken

aboard. After the deck crew had been summoned, the Boatswain noticed Appellant's absence. He then went to Appellant's quarters and ordered him to help take in the gangway safety net. Appellant responded that he had not been called. The Boatswain returned to the deck and questioned the able seaman whose duty it had been to summon the deck crew. The able seaman stated that he had notified the Appellant. At this time, Appellant came on deck. The Boatswain informed him that the able seaman had said that he had alerted the Appellant whereupon Appellant called the Boatswain a liar. The Boatswain replied, "Well, that's all I can go by." Appellant then attacked him with his fists, knocking the Boatswain to the deck and pummeling him when he attempted to get up.

The altercation was not logged by the ship's Captain until 4 January 1976. The Captain testified that he had been requested by the ship's Deck and Engine Room Union delegates not to log Appellant as they were fearful of his reaction.

On 16 January 1976, a hearing was held concerning a charge of misconduct and one specification against Appellant for wrongfully assaulting the Boatswain. Following presentation of evidence, the Judge ruled that a prima facie case had been established against the Appellant.

The Appellant testified in his own defense, alleging that the charge had been, "arrange to have a record against my papers," and involved, "intentional and lying testimony by all involved." Appellant became increasingly incoherent during testimony, stating that the source of his troubles stemmed from an "electronic device" which had allegedly been implanted in his head and that he was being persecuted by a group of religious radicals.

The Investigating Officer made a motion that Appellant be examined by a Public Health Service doctor for psychiatric evaluation. The Judge issued an interlocutory order to that effect on 13 February 1976 ordering Appellant to report to the Public Health Service Hospital in Washington, D.C., a location Appellant had requested.

The doctor who examined Appellant diagnosed his condition as "paranoid schizophrenia, manifested by paranoid delusions, auditory hallucinations and emotional withdrawal." This conclusion is supported by Appellant's handwritten brief in which he refers to a lump on his head as the source of voices and other "undesirable functions."

#### BASES OF APPEAL

(1) The testimony of the Master and Boatswain in which they described the altercation and the crew's apprehension of

Appellant's potential for violent behavior is false.

(2) The Public Health Service's diagnosis of Appellant's mental health is incorrect.

APPEARANCE: Appellant pro se.

### OPINION

#### I

I find that the evidence required to conclude that Appellant committed wrongful assault and battery upon the Boatswain is substantial and probative. This evidence included the testimony of the ship's Master and the individual assaulted, as well as that of a crewman who witnessed the altercation. As has been stated by many times, it is the function of the trier of facts to assign weight to the evidence and resolve conflicts. Although the testimony of the ship's Master was hearsay, it may still be given whatever weight the Judge determines that it is worth. The sole limitation is that his findings may be based upon hearsay alone (see Appeal Decision No. 1770 (CAREY)). The Judge had declared that he found a prima facie case against Appellant to have been proved following the testimony of the Boatswain. The affect of a prima facie case was discussed in Appeal Decision No. 477(BECKFORD):

"Thus, the Investigating Officer's prima facie case was based on a rebuttable presumption which is sufficient to establish the case so long as there is no substantial evidence to the contrary. Although the burden of proof did not shift, the affect of this prima facie proof was to put the burden on the Appellant of going forward with the evidence."

Appellant's contention that the evidence presented by the witnesses was fabricated as part of a continuing conspiracy fails to refute the prima facie. The findings of the Judge will not be disturbed absent a showing that the Judge was arbitrary or capricious. As the record does not indicate that the Judge acted in an arbitrary or capricious manner, his findings are upheld.

#### II

Appellant's assertion that the Public Health Service doctor's diagnosis of his mental state is erroneous collapses in view of the statements made by Appellant during the course of the Hearing. Throughout, Appellant alleges that the case:

"was set up strictly to make a bad record, and establish further bad record and relieve me of four to five thousand dollars."

Appellant also makes reference several times to an electronic device implanted within in his skull which he maintains is the cause of his difficulties. In short, Appellant's own words best illustrate the accuracy of the doctor's diagnosis.

### III

In connection with the framing of an appropriate order, it is well to keep in mind that the primary function of the administrative hearing is the promotion of safety of life and properly at sea. The Public Health Service doctor has stated that the Appellant, especially in view of his refusal to take medical treatment, is likely to interpret:

"any problems on board the ship as being connected to his paranoid delusional system; this could lead to further difficulties, such as the fight on board ship that was the occasion for the court hearing."

As was stated in Appeal Decision No. 1931 (POLLARD).

"An individual who cannot exercise a great deal of self-restraint during minor disagreements is not fit to pursue such an occupation."

In the present instance, Appellant has not only demonstrated an inability to cope with minor disagreements, but has been diagnosed and shown himself capable of manufacturing illusions which may cause him to react violently. In view of these factors, there is no alternative but to revoke Appellant's seaman's documents.

### CONCLUSION

It is concluded that substantial evidence of a reliable and probative nature has been presented to support the findings of the Judge that Appellant, without provocation, committed wrongful assault and battery upon another crewmember. It is also decided that the Judge's finding that Appellant is not fit for duty at sea is amply supported by the diagnosis of the examining doctor and Appellant's testimony.

### ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 2 June 1976, is AFFIRMED.

O. W. Siler  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 28th day of Oct. 1976.

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